

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

M.O.C.H.A. SOCIETY, INC., et al.,

Plaintiffs,

-vs-

98-CV-99-JTC

CITY OF BUFFALO,

Defendant.

Thirteen plaintiffs in the state court action entitled *Margerum, et al. v. City of Buffalo, et al.*, Index No. 1462/2007 (N.Y. Sup.Ct., Erie Co.), have filed a motion in this action pursuant to Rule 24(a) of the Federal Rules of Civil Procedure¹ seeking to intervene for the purpose of appealing this court's December 19, 2007 order (Item 302),² and to otherwise protect their interests in the subject matter and outcome of this litigation. In the absence of any stated opposition by the City to the relief requested by the proposed intervenors, the motion (Item 306) is granted. The Clerk of the Court is directed to amend the Civil Docket for this case to indicate that non-parties Eugene Margerum, Anthony Hynes, Joseph Fahey, Timothy Hazelet, Peter Kertzie, Peter Lotocki, Scott Skinner, Thomas Reddington,

¹Rule 24(a) provides:

Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or
(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

²A review of the Civil Docket Report for this case indicates that a notice of appeal was filed on January 18, 2008 (Item 307).

Timothy Cassel, Matthew S. Osinski, Mark Abad, Brad Arnone, and David Denz are permitted to intervene as of right in this action.

The intervenors have also submitted a "Memorandum of Law in Opposition to Defendant's Motion for Preliminary Injunction Against Non-Parties" (Item 305) in which they request that the court reconsider its December 19th order, issued under the authority of the All Writs Act (28 U.S.C. § 1651), which enjoined the *Margerum* plaintiffs and their attorneys from seeking further relief in the state courts pending the outcome of the trial in this case to determine the legality of the City's promotion of firefighters based on the results of the 1998 Lieutenant's Examination. This request is denied.

Reconsideration of a prior decision lies fully within the court's discretion, and is generally found to be justified only under the following circumstances: (1) an intervening change in controlling law, (2) the availability of new evidence, or (3) the need to correct a clear error of law or to prevent manifest injustice. See *Marranca v. Commissioner of I.R.S.*, 2008 WL 281787, at *1 (W.D.N.Y. January 31, 2008) (citing *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992)). Upon careful consideration of the matters set forth in the intervenors' memorandum, the court finds none of these circumstances to be present.

Also pending is a motion filed by the City (Item 308) seeking an order of contempt against the *Margerum* plaintiffs based on reported violations of the terms of this court's December 19th order. In light of the court's rulings herein with respect to intervention and reconsideration, counsel for the City and counsel for the intervenors are directed to meet and confer in an attempt to informally resolve the matters raised by the City's motion for contempt. The court remains generally available for conference by telephone should

counsel require assistance in this regard. In the event no informal resolution can be reached, the court will take up the contempt motion upon conclusion of the class certification hearing and final pretrial conference, scheduled to commence at 11:00 a.m. on June 16, 2008 (see Item 315).

So ordered.

\s\ John T. Curtin
JOHN T. CURTIN
United States District Judge

Dated: 2/16 , 2008
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